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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

Case No. **2013-44**

13 **DAVID VAN VO**

**STATEMENT OF ISSUES**

14 **Registered Nurse License Applicant**

15 **Respondent.**

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
20 her official capacity as the Interim Executive Officer of the Board of Registered Nursing,  
21 Department of Consumer Affairs.

22 2. On or about December 19, 2011, the Board of Registered Nursing, Department of  
23 Consumer Affairs received an application for a Registered Nurse License from David Van Vo  
24 (Respondent). On or about December 13, 2011, David Van Vo certified under penalty of perjury  
25 to the truthfulness of all statements, answers, and representations in the application. The Board  
26 denied the application on February 27, 2012.

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## JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

## STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3) (A) Done any act that if done by a licentiate of the business or profession  
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the  
4 crime or act is substantially related to the qualifications, functions, or duties of the  
5 business or profession for which application is made.

6 (b) Notwithstanding any other provision of this code, no person shall be denied  
7 a license solely on the basis that he or she has been convicted of a felony if he or she  
8 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with  
9 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been  
10 convicted of a misdemeanor if he or she has met all applicable requirements of the  
11 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a  
12 person when considering the denial of a license under subdivision (a) of Section 482.

13 (c) A board may deny a license regulated by this code on the ground that the  
14 applicant knowingly made a false statement of fact required to be revealed in the  
15 application for the license.

16 7. Section 482 of the Code states:

17 Each board under the provisions of this code shall develop criteria to evaluate  
18 the rehabilitation of a person when:

19 (a) Considering the denial of a license by the board under Section 480; or

20 (b) Considering suspension or revocation of a license under Section 490.

21 Each board shall take into account all competent evidence of rehabilitation  
22 furnished by the applicant or licensee.

23 8. Section 492 of the Code states:

24 Notwithstanding any other provision of law, successful completion of any  
25 diversion program under the Penal Code, or successful completion of an alcohol and  
26 drug problem assessment program under Article 5 (commencing with section  
27 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any  
28 agency established under Division 2 ([Healing Arts] commencing with Section 500)  
of this code, or any initiative act referred to in that division, from taking disciplinary  
action against a licensee or from denying a license for professional misconduct,  
notwithstanding that evidence of that misconduct may be recorded in a record  
pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program  
operated by any agency established under Division 2 (commencing with Section 500)  
of this code, or any initiative act referred to in that division.

9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a  
board within the department pursuant to law to deny an application for a license or to  
suspend or revoke a license or otherwise take disciplinary action against a person who  
holds a license, upon the ground that the applicant or the licensee has been convicted  
of a crime substantially related to the qualifications, functions, and duties of the

licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

10. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

.....  
(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

.....  
(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

11. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

.....  
(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

12. Section 2765 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

### REGULATORY PROVISIONS

13. California Code of Regulations, title 16, section 1444 states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

14. California Code of Regulations, title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

~~(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).~~

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

1  
2 **DRUGS**

3 15. Methamphetamine is a Schedule II controlled substance as designated by Health  
4 and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business  
5 and Professions Code section 4022.

6 16. Marijuana is a Schedule I controlled substance as designated by Health and Safety  
7 Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business &  
8 Professions Code section 4022.

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 **(October 30, 2001 Criminal Conviction for Possession of a Controlled Substance  
11 and Possession of Drug Paraphernalia on July 4, 2001)**

12 17. Respondent's application is subject to denial under sections 480 subdivisions (a)(1)  
13 and (a)(3)(A), and 2761, subdivision (f) of the Code in that he was convicted of a crime that is  
14 substantially related to the qualifications, duties, and functions of a registered nurse. The  
15 circumstances are as follows:

16 a. On or about October 30, 2001, in a criminal proceeding entitled *People of*  
17 *the State of California v. David Van Vo*, in Orange County Superior Court case number  
18 01NF1732, Respondent was convicted on his plea of guilty of violating Health and Safety Code  
19 sections 11377, subdivision (a), possession of a controlled substance, to wit methamphetamine,  
20 reduced to a misdemeanor pursuant to Penal Code section 17, subdivision (b)(5); and 11364,  
21 possession of a controlled substance smoking paraphernalia, a misdemeanor.

22 b. As a result of the conviction, on or about October 30, 2001, Respondent  
23 was sentenced to three days in the Orange County Jail, with credit for three days, three years  
24 informal probation, 120 hours work service with CalTrans, and payment of \$100 in restitution.  
25 Following Respondent's failure to complete the CalTrans work service, Respondent's probation  
26 was revoked at a hearing on or about January 30, 2002. Probation was reinstated, and  
27 Respondent was ordered to serve two days in the county jail.

28 c. The facts that led to the conviction are that on or about the morning of July  
4, 2001, officers from the Buena Park Police Department were attempting to serve an arrest

1 warrant on a fugitive at a Buena Park motel. The motel desk clerk directed the officers to Room  
2 No. 177 where the clerk had previously observed the fugitive. The uniformed officers knocked  
3 on the door of Room No. 177. A male subject looked through the curtains, observed the officers,  
4 and closed the curtains. The officers requested that the subject speak to them. The subject asked  
5 the officers to hold on. Approximately one minute later, the subject opened the door. The  
6 officers asked him to step outside so they could speak to him; the subject complied. The officers  
7 observed a red box located at the foot of the bed, approximately 10-12 feet away. The box  
8 contained a glass pipe with an off-white residue inside, which the officers determined was used  
9 for smoking methamphetamine. The officers asked the subject why it took him so long to open  
10 the door. The subject stated that he was trying to wake up his friend, David (Respondent) who  
11 was sleeping in another room. Without entering the room, the officers attempted to make verbal  
12 contact with Respondent. Concerned about their own safety, as well as that of Respondent, the  
13 officer entered the back bedroom and found Respondent awake and lying on a bed. Respondent  
14 was taken outside with the first subject. Both were questioned concerning the whereabouts of the  
15 fugitive. The room was registered in the name of the male subject, who gave the officers  
16 permission to search the premises. While searching the room that had been occupied by  
17 Respondent, the officers found a plastic container. Inside the container was a glass vial  
18 containing what was later determined to be methamphetamine. Also located were two glass  
19 smoking pipes and a 6-inch, double-edged dagger on the bed. Respondent was questioned  
20 regarding the methamphetamine and pipes. Respondent admitted that they belonged to him,  
21 stating "It's my shit. I spent a lot of money on that for nothing." Prior to placing Respondent  
22 into the police unit, Respondent asked the officers "Can I smoke a bowl of that shit before we  
23 go?" The officer asked Respondent what he meant by "a bowl of that shit." Respondent replied  
24 "Come on, man, that meth." Respondent told the officers if they let him smoke some of the  
25 methamphetamine, he would let them have some, too. After reading Respondent his Miranda  
26 rights at the police station, Respondent told the officer he had been smoking methamphetamine  
27 since he was 15 years old. Respondent was 19 years old at the time of his arrest.

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1                                   **SECOND CAUSE FOR DENIAL OF APPLICATION**

2                                   **(Possession of a Controlled Substance on July 4, 2001)**

3           18.       Respondent's application is subject to denial under section 480 subdivision  
4 (a)(3)(A) of the Code in that on or about July 4, 2001, Respondent possessed, and admitted to  
5 possessing methamphetamine, a controlled substance and dangerous drug, as detailed in  
6 paragraph 17, above. Said conduct would be a ground for discipline under section 2762,  
7 subdivision (a) of the Code for a licensed registered nurse.

8                                   **THIRD CAUSE FOR DENIAL OF APPLICATION**

9                                   **(Conviction of a Drug-Related Criminal Offense)**

10          19.       Respondent's application is subject to denial under section 480, subdivision  
11 (a)(3)(A) of the Code in that on or about October 30, 2001, Respondent was convicted of  
12 possessing methamphetamine, as detailed in paragraph 17, above. Said conviction would be a  
13 ground for discipline under section 2762, subdivision (c) of the Code for a licensed registered  
14 nurse.

15                                   **FOURTH CAUSE FOR DENIAL OF APPLICATION**

16                                   **(Possession of a Controlled Substance on August 4, 2007)**

17          20.       Respondent's application is subject to denial under section 480, subdivision  
18 (a)(3)(A) of the Code in that on or about August 4, 2007, Respondent was found in possession of  
19 a controlled substance, to wit, marijuana. Said conduct would be a ground for discipline under  
20 section 2762, subdivision (a) of the Code for a licensed registered nurse. The circumstances are  
21 as follows:

22                   a.    On or about August 4, 2007, a patrol officer from the Garden Grove Police  
23 Department made contact with a vehicle containing four passengers, including Respondent. After  
24 having the female driver roll down her window, the officer noted a strong odor of marijuana  
25 emanating from the vehicle. The officer asked the driver if there was anything illegal in the  
26 vehicle. The driver stated that there might be marijuana. The officer had all four occupants,  
27 including Respondent, exit the vehicle. The driver told the officer that he would find a baggie of  
28 marijuana under the driver's seat and gave permission to search her vehicle. While searching the



1 backseat of the vehicle, where Respondent had been sitting, the officer located a glass jar  
2 containing marijuana. The officer asked Respondent if the marijuana belonged to him and he said  
3 "Yes, it's mine." Respondent admitted to the officer that he smoked "two bowls" of marijuana  
4 that day, and was aware that possession and use of marijuana was illegal. Respondent was cited  
5 and released on promise to appear in court on the charges.

6 b. On or about September 9, 2007, at a hearing in the matter of *People of the*  
7 *State of California v. David Van Vo*, Orange County Superior Case No. GG143079, the court  
8 ordered that the charge of violating Health and Safety Code section 11357, subdivision (b),  
9 possessing less than one ounce of marijuana, would be dismissed upon successful completion of  
10 the diversion program, consisting of three Narcotics Anonymous meetings.

11 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

12 **(Discipline Against Respondent's Vocational Nurse License)**

13 21. Respondent's application is subject to denial under section 2761, subdivision (a)(4)  
14 of the Code in that on or about June 26, 2009, in a prior administrative proceeding entitled *In the*  
15 *Matter of the First Amended Statement of Issues Against David Van Vo*, in case number VN-  
16 2007-1627, the California Board of Vocational Nursing and Psychiatric Technicians adopted a  
17 disciplinary order that provided for the issuance of a vocational nurse license to Respondent. The  
18 vocational nurse license was immediately revoked, with the revocation stayed and placed on three  
19 years probation on certain terms and conditions. The bases for the denial of Respondent's  
20 application for a vocational nurse license were the same facts and circumstances described in  
21 paragraphs 17-20, above, which are incorporated herein by reference. Respondent admitted the  
22 truth of every charge and allegation in the First Amended Statement of Issues.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of David Van Vo for a Registered Nurse License;
2. Taking such other and further action as deemed necessary and proper.

DATED:

*July 13, 2012*

*Louise R. Bailey*  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

SD2012703280